

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**W.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Southaven, MS, Employer**

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**Docket No. 12-260  
Issued: May 9, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 23, 2011 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated October 13, 2011 concerning the denial of his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on August 25, 2011.

**FACTUAL HISTORY**

On August 29, 2011 appellant, then a 53-year-old clerk, filed a traumatic injury claim alleging that on August 25, 2011 he injured his left leg when he was bitten by a spider at work. On the back of the form the employing establishment controverted the claim.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

In correspondence dated September 7, 2011, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. He was advised to submit additional medical and factual evidence and given 30 days to provide the requested information. No response was received within the allotted time frame.

By decision dated October 13, 2011, OWCP denied appellant's claim on the grounds that he did not establish injury as alleged.<sup>2</sup> It found that the evidence was insufficient to show that the claimed spider bite incident occurred. Additionally, OWCP noted that no medical evidence was submitted.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.<sup>6</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant failed to establish that he sustained an injury while in the performance of duty on August 25, 2011.

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<sup>2</sup> The Board notes that, following the October 13, 2011 decision, OWCP received medical evidence. Appellant also submitted medical evidence with his appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

<sup>7</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

The evidence of record on appeal does not provide any details regarding appellant's injury. Appellant submitted a Form CA-1 but did not provide OWCP with any medical evidence to establish his claim. The Form CA-1 simply recounted an incident as alleged by appellant. His supervisor controverted the claim. Appellant failed to submit any further description of the circumstances surrounding this incident or rationalized medical opinion evidence based on a complete factual and medical background to support a causal relationship between his left leg injury and any August 25, 2011 incident. There is no evidence of any examination or treatment, history of the injury, description of a physician's findings, results of any tests performed or firm medical diagnosis. There is no medical opinion from a physician addressing whether there is a causal relationship between his claimed left leg injury and any incident of August 25, 2011.

On September 7, 2011 OWCP informed appellant of the evidence needed to support his claim; however, the record before the Board contains no medical evidence or any factual evidence within the time allotted. The Board finds that appellant failed to provide the factual and medical evidence required to establish a *prima facie* claim.<sup>9</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on August 25, 2011

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<sup>9</sup> A.C., Docket No. 08-1453 (issued November 18, 2008); *Richard H. Weiss*, 47 ECAB 182 (1995). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4 (June 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 13, 2011 is affirmed.

Issued: May 9, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board